

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JASON BIRDTAIL, JR.,

Defendant.

CR 14-105-GF-BMM-JTJ

**AMENDED FINDINGS AND
RECOMMENDATIONS**

I. Synopsis

Defendant Jason Birdtail, Jr. (Birdtail) has been accused of violating the conditions of his supervised release. Birdtail admitted all of the alleged violations. Birdtail's supervised release should be revoked. Birdtail should be placed in custody for 8 months, with 14 months of supervised release to follow. Birdtail should serve the first 60 days of supervised release at Connections Corrections in Butte, Montana.

II. Status

Birdtail pleaded guilty to Assault Resulting in Serious Bodily Injury on February 9, 2015. (Doc. 30). The Court sentenced Birdtail to 33 months of

custody, followed by 2 years of supervised release. (Doc. 43). Birdtail's current term of supervised release began on December 12, 2018. (Doc. 70 at 2).

Petition

The United States Probation Office filed an Amended Petition requesting that the Court revoke Birdtail's supervised release on February 15, 2019. (Doc. 70). The Petition alleged that Birdtail had violated the conditions of his supervised release: 1) by using marijuana; 2) by consuming alcohol on two separate occasions; 3) by failing to report for substance abuse testing; 4) by failing to report for substance abuse treatment; 5) by failing to a report contact with law enforcement; and 6) by committing another crime. United States District Brian M. Morris issued a warrant for Birdtail's arrest on February 15, 2019. (Doc. 71).

Initial appearance

Birdtail appeared before the undersigned for his initial appearance on March 5, 2019. Birdtail was represented by counsel. Birdtail stated that he had read the petition and that he understood the allegations. Birdtail waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

The Court conducted a revocation hearing on March 5, 2019. Birdtail

admitted that he had violated the conditions of his supervised release: 1) by using marijuana; 2) by consuming alcohol on two separate occasions; 3) by failing to report for substance abuse testing; 4) by failing to report for substance abuse treatment; 5) by failing to a report contact with law enforcement; and 6) by committing another crime. The violations are serious and warrant revocation of Birdtail's supervised release.

Birdtail's violations are Grade C violations. Birdtail's criminal history category is II. Birdtail's underlying offense is a Class C felony. Birdtail could be incarcerated for up to 24 months. He could be ordered to remain on supervised release for up to 25 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 4 to 10 months.

III. Analysis

Birdtail's supervised release should be revoked. Birdtail should be incarcerated for 8 months, with 14 months of supervised release to follow. Birdtail should serve the first 60 days of supervised release at Connections Corrections in Butte, Montana. This sentence is sufficient but not greater than necessary.

IV. Conclusion

The Court informed Birdtail that the above sentence would be recommended to Judge Morris. The Court also informed Birdtail of his right to object to these

Findings and Recommendations within 14 days of their issuance. The Court explained to Birdtail that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose. The Court also informed Birdtail of his right to allocute before Judge Morris.

The Court **FINDS:**

That Jason Birdtail, Jr. violated the conditions of his supervised release by failing to notify his probation officer of a change in residence, by failing to report for substance abuse treatment, by failing to report for chemical dependency treatment, and by committing another crime.

The Court **RECOMMENDS:**

That the District Court revoke Birdtail's supervised release and commit him to the custody of the United States Bureau of Prisons for a term of 8 months, with 14 months of supervised release to follow.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A United States district court judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district court judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations.

Failure to timely file written objections may bar a de novo determination by the district court judge, and may waive the right to appear and allocute before a district court judge.

DATED this 1st day of April, 2019.



John Johnston
United States Magistrate Judge